

**JAN 17 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RAFAEL MAGANA-VALENCIA,

Defendant - Appellant.

No. 04-10622

D.C. No. CR-03-40023-DLJ

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
D. Lowell Jensen, District Judge, Presiding

Submitted January 9, 2006<sup>\*\*</sup>

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Rafael Magana-Valencia, Jr. appeals the sentence imposed following his guilty plea for possession with intent to distribute and distribution of heroin in violation of 21 U.S.C. § 841(a)(1).

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

As part of his plea agreement, Magana-Valencia waived his right to appeal his conviction or sentence. Relying on the Supreme Court's holding in the subsequently decided *United States v. Booker*, 125 S. Ct. 738 (2005), Magana-Valencia contends that his plea, and its appellate waiver, was not intelligent or voluntary because the district court misinformed him that the Sentencing Guidelines were mandatory. Magana-Valencia's contention is foreclosed by *United States v. Cardenas*, 405 F.3d 1046, 1048 (9th Cir. 2005) (“[A] change in the law [such as *Booker* ] does not make a plea involuntary and unknowing.”). Accordingly, we enforce the appeal waiver, and dismiss. *Id.*

**DISMISSED.**